



FINAL DEGREE PROJECT

"UNFAIR COMPETITION AND THE COLLABORATIVE ECONOMY: THE CASE OF UBER"

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Study of Uber case as a transport service that practices unfair competition or as an intermediary activity of the emerging collaborative economy. Review of the legal framework in both services and analysis of the Spanish regulations on transport subject to possible deregulation to integrate into the market the opportunities of the so-called collaborative economy in economic, sociological and ideological terms.

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"UNFAIR COMPETITION AND THE COLLABORATIVE ECONOMY: THE CASE OF UBER"

1. INTRODUCTION

The business world and its competitive rivalry can be interesting for many, since there needs to be competition and the desire to overcome it for one's own economic development. It also has a dark side. An example of this dark side is the unfair competition that arises when some companies and employees practice unethical practices.

In this sense, in the theoretical framework we are going to deal with two important concepts to differentiate, unfair competition with the activities that are classified as such and the collaborative economy. Discerning these two terms, accompanied by the legal framework that encompasses them, will help us to fully understand Uber's case that in recent years has been accused of unfair competition and to understand its problems.

Likewise, and once the case and its development are known, we will discuss the liberation of the transport sector in Spain, and we will carry out a bibliographic analysis to obtain references that support, or not, the condition of unfair competition that has been attributed to the Uber case, since it is considered that there are still fields, in the field of intermediation services, pending legislative development.

Once we have carried out the bibliographic study, what has been raised will be discussed, ending with a conclusion in which possible opinions supported by the references obtained in the research will take place.

1.1 THEORETICAL AND LEGAL FRAMEWORK OF UNFAIR COMPETITION

Unfair competition is a practice contrary to fair practices of respect and fidelity to moral principles in industry and commerce that conflicts with the requirements of good faith. This applies to all kinds of questionable honesty, (without necessarily committing the crime of “illegality” fraud), that a manufacturer or seller may implement to increase its market share and eliminate competition. Therefore, it means breaking the rules and ignoring fairness in competition. For an act to be considered unfair competition, the following conditions must be met:

- Make it an action of external importance to the market.
- Its purpose is to distribute its own or third party products and services to compete.

According to Spanish regulations, business conduct or practices are implicit if they are not consistent with professional diligence. That is, when it is incompatible with practices that are considered fair in the market or that seek to distort consumer behaviour. Unfair competition in Spain is governed by Law 3/1991 of January 10 (published in B.O.E. no. 10 of January 11, 1991).

Regarding the EU, it has strict rules for the protection of free competition that prohibit certain practices. When a company infringes EU competition rules, it may end up facing a fine equivalent to up to 10% of its annual global turnover. In some EU countries, managers of offending companies face severe penalties or even prison terms. EU competition rules apply directly in all Member States, so national courts are obliged to uphold them. These rules apply not only to companies, but to all organisations that carry out an economic activity (such as professional associations, sectoral groupings, etc.).

Illegal contacts and deals are known as cartels. They are prohibited because they restrict competition. They can take many forms and do not need to be formally approved by the companies that participate in them. The most common examples of such practices are:

- Fix price
- Market share
- Customer assignment agreement
- Production limitation agreement
- Distribution agreements between suppliers and resellers, where, for example, prices charged to customers are set by the supplier.

All agreements and communications that take place between a company and its competitors that reduce the uncertainty of a strategic market (in terms of its operating costs, billing, capacity, marketing plans, etc.) can be considered anti-competitive. In this sense, the areas covered by unfair competition are presented as a summary below:

1. Low cost of sale

A sale would be unfair if it could mislead consumers about the price level of other goods or services from the same store. In addition, when it is done to discredit the image of a foreign service or product, or to remove competitors from the market.

2. Economic dependence

It is unfair for a company to use its customers or suppliers who have no other alternative to carry out their business. This happens when a company forces a supplier to provide benefits that would not normally be extended to other customers.

3. Parasitic imitation

It is about copying the strengths of a competitor to prevent them from prospering in the market. This often happens with very powerful companies that want to prevent new competitors from emerging.

4. To cheat

This happens when a company provides false or non-transparent information, omitting true information about what it offers. This misleads its customers.

5. Induce the breach of the employment contract

This occurs when a company encourages client companies or its competitors to violate the contractual obligations they have acquired as a result of a specific competition.

6. Competence acquired as a result of the infringement of the law

An example of this is the competitive advantage that is achieved by violating the laws that regulate competition. Also when hiring foreigners without a work permit.

7. Act of confusion

This occurs when the customer is led to believe that the product is of a different origin or composition. This obviously makes the product more palatable.

8. Delivery of gifts or bonuses when they force the buyer to make a purchase.

Unfair competition also consists of offering an advantage or premium when it can mislead the price level of other services from the same company, or when the effective value of the proposal or its comparison with other offers from other companies is not clear.

9. Other unfair competition actions

- Use the reputation of another company in the market. This use can be for your own benefit or for someone else's.
- Submission of termination to the acceptance of benefits that have nothing to do with the contract.

- Public denigration of any activity by a competing company, unless the accuser shows that the alleged reasons are true.
- Public comparison with a third party when the comparison refers to aspects that are not similar, relevant or verifiable.

1.2 THEORETICAL AND LEGAL FRAMEWORK OF THE COLLABORATIVE ECONOMY

The key to understanding the reason for the success of the sharing economy is sharing. The economic crisis has contributed to a change in attitude in which property is no longer necessary, which has led to a new market that has revolutionised the understanding of the services now provided by people and institutions that depend on Internet and new technologies, originating a mode of consumption that shows change and commitment to innovation in a society that increasingly demands more services based on free competition.

Botsman and Rogers (2010) proposed a definition of collaborative economy, opposing other terms that are often used interchangeably, but are really different. This categorisation has been used by numerous academics as a starting point for the study of cooperative economics. According to the authors, the cooperative economy is based on networks of interconnected people and communities, compared to centralised institutions that transform the form of production, consumption, financing and lending using shared consumption as a foundation, which is defined as an economic model based on the exchange, sale or lease of products and services that provide access to the goods through the owner, so that the changes are not related to consumption, but to the way it is consumed. Therefore, the collaborative economy is an economic model based on the distribution of underused assets by their owners, such as premises, tools or elements, for monetary or non-monetary benefits. Likewise, this economic model is linked to the egalitarian economy that is applied to the private to private markets on the basis of trust between them, which promotes both the exchange and the direct sale of products and services.

However, ten years later, the phenomenon of the collaborative economy, with the invaluable help of new technologies, has become a recent and rapidly evolving reality that has come into force at a global level and in which numerous activities are carried out, so it is difficult to pin down. Uber was considered one of the most significant examples of the so-called cooperation economy. Therefore, seeing the reaction of the market with the appearance of the cooperation economy, this could also be considered as an economic movement that pursues a more efficient use of under-utilised goods through electronic means of communication. This definition is based on three

fundamental principles: the drive to increase the use of under-utilised goods and services to create a more sustainable and efficient society, the primacy of property over property, and the use of communication channels that provide greater access and speed.

The National Commission of Markets and Competition (CNMC) has expressed in its preliminary findings on new models of service provision and economy, which is conceptualised as: *“an innovative, disruptive, dynamic and heterogeneous phenomenon that has very different characteristics and manifestations in diverse geographic and product markets”*. It is believed to include an uneven and rapidly changing set of modes of production and consumption through which agents share assets and goods in innovative ways.

The European Commission refers to *“business models that operate through collaborative platforms, which create an open market for the temporary use of goods or services, often offered by individuals. There are three categories of agents involved in the sharing economy:*

i) service providers who share assets, resources, time and / or skills - these can be individuals who offer services from time to time (“colleagues”) or service providers who operate in a professional capacity (“Professional Service Providers”)

ii) users of the specified services

iii) intermediaries that, through an online platform, connect providers with users and facilitate transactions between them (“collaboration platforms”). In general, operations in the economy do not imply a change of ownership and can be carried out with or without profit”.

From these definitions, it seems clear that Uber will enter the legal coverage of those companies that are under the umbrella of this new phenomenon of the collaborative economy and allows them to present themselves as developers of information society services. But the truth is that, under the auspices of the joint economy, a very extensive and varied catalog of activities is included: exchange of houses, common gardens, exchange of various types of services (for example, an individual rents his house to another to change to offer language classes), etc. A phenomenon, in short, that has generated a series of platforms -commercial or not- that operate on different organisational models based on the purchase or sale, loan, exchange or rental of products or services.

These systems attract more and more users, creating the so-called Redistribution Markets that consist of redistributing used or purchased goods that are no longer needed, to a place or to someone who needs them (for example, exchange markets and second-hand goods). In some markets, the products may be free (No Lo Tiro), in others they are sold (Vinted). Therefore, Redistribute can become the fifth R, along with Reduce, Reuse, Recycle, and Repair. A lifestyle based on cooperation in which you can share or exchange not only material goods. People with common interests come together to share and exchange less tangible assets such as time, space, skills and money (example: loans between people). These exchanges take place mainly at the local or district level, where jobs (Coworking in Barcelona), cultivation (Shared Gardens), Wi-Fi (Fon) or individual loans (Community) are shared. More globally, we rent rooms to travellers (Airbnb) or just let people sleep at home (Couchsurfing).

All this casuistry has led the doctrine to study and analyse a kind of "platform typology" of the economy of cooperation, based on its social function:

- Those that promote more sustainable consumption habits,
- Those who promote exchange as a modern model of 'barter'
- Those who operate for profit

In this sense, the Uber company would be located in the for-profit operators within the collaborative economy. However, to continue developing the subject under study, it is necessary to know the legal nature of the activities carried out by Uber.

Uber, has always presented itself as an information society service provider, it is necessary to carry out at least a brief examination of the regulatory mechanism of European Union Law applicable to the factual case we are considering, given that the legal regime that gives place to companies providing services of the information society is strongly inspired by European regulations, which finally crystallised in State Law 34/2002 - while the regulations that bind the transport sector enjoy strong influence from the State (with the adequate distribution of powers that corresponds to the autonomous communities), which in our case is part of the constitutional declaration of article 149.1.21 of the Official State Gazette, 1978:

"The State has exclusive competence in the following matters: railways and land transport that travel through the territory for more than one autonomous community [...]"

Having initially located the activity of Uber within the services of the Information Society, the starting point should be the Original Law of the European Union; in particular, article 56 of the Treaty on the Functioning of the European Union 2012 (hereinafter TFEU) which crystallises the principle of freedom to provide services:

"Within the framework of the following provisions, restrictions on the freedom to provide services within the Union for nationals of the Member States established in a Member State other than that of the recipient of the provision shall be prohibited.

The European Parliament and the Council, in accordance with the ordinary legislative procedure, may extend the benefit of the provisions of this chapter to service providers who are nationals of a third State and are established within the Union. "

We therefore see that the European Parliament and Council explicitly prohibit the imposition of restrictions on the freedom to provide services in the EU and thus crystallise the principle of freedom to provide services. A principle that is in line with the main objective that we know the European Union pursues; create an even closer alliance between European states and peoples, in addition to ensuring economic and social progress. For this, it is necessary that there be an interior space without borders, through which goods and services can circulate without restrictions and where freedom of creation is guaranteed. To remove existing barriers, it is necessary to develop the information society.

The next step is to analyse the very extensive regulations of the European Parliament and the Council (secondary law), after which it is necessary to highlight mainly three Directives:

- Directive 98/34/EC of the European Parliament and of the Council of June 22, 1998, which establishes the information procedure on standards and technical regulations (hereinafter Directive 98/34/EC);
- Directive 2000/31/EC of the European Parliament and of the Council, of June 8, 2000, on certain aspects of information society services and, in particular, electronic commerce in the internal market (Directive 2000/31/EC)

- Directive 2006/123 / EC of the European Parliament and of the Council, of 12 December 2006, on services in the internal market, which explicitly excludes services from its scope of application in the transport sector in article 2.2, section d:

"services in the field of transport, including port services, which fall within the scope of application of title V of the Treaty."

An information society service means according to Directive 98/34/EC, article 1.2:

"Any service normally provided in exchange for remuneration, remotely, electronically and at the individual request of a recipient of services for the purpose [...]"

This phenomenon is especially evident in Directive 2000/31/EC, article 1.1:

"This Directive, which aims to promote the proper functioning of the internal market by creating an adequate legal framework to guarantee the free movement of information society services between the different Member States"

This objective is established for this purpose in the same Directive 2000/31/EC, article 3.2:

"Member States cannot restrict the freedom to provide information society services of another Member State for reasons inherent to the agreed scope".

In the same Directive 2000/31/EC, article 3.4, the non-application of the recently mentioned article 3.2 is indicated:

"Member States may take measures that constitute exceptions to paragraph 2 with respect to a specific information society service if the following conditions are met:

a) The measures must be:

i) necessary for one of the following reasons:

- *public order, in particular the prevention, investigation, discovery and prosecution of crime, including the protection of minors and the fight against incitement to hatred on the grounds of race, sex, religion or nationality, as well as violations of the human dignity of individual persons,*
- *protection of public health,*
- *public security, including the safeguarding of national security and defence,*

- protection of consumers, including investors;

ii) taken against an information society service that is detrimental to the objectives set forth in item or that presents a serious risk of being detrimental to said objectives;

iii) proportionate to said objectives. "

In particular, according to Directive 2006/123/EC, article 9.1 regarding authorisation regimes:

1. *"Member States may only make access to a service activity and its exercise subject to an authorisation regime when the following conditions are met: a) the authorisation regime is not discriminatory for the provider in question; b) the need for an authorisation regime is justified by an overriding reason of general interest; "*

Thus, this protectionist spirit crystallised in our country in Law 34/2002 of July 11 on services of the information society and electronic commerce (hereinafter - LSSI), which was introduced into our legal system with the aim of incorporating the well-deserved Directive of Electronic Commerce to our national legislation. According to article 8.1 on restrictions to the provision of services and intra-community cooperation procedure, we observe the exceptions of application to the free operation of services:

1. *"In the event that a specific information society service violates or may violate the principles expressed below, the competent bodies for its protection, in exercise of the functions that are legally attributed, may adopt the measures necessary for their provision to be interrupted or to withdraw the data that violates them. The principles referred to in this section are the following:*

a) Safeguarding public order, criminal investigation, public security and national defence.

b) The protection of public health or of natural or legal persons who have the status of consumers or users, even when they act as investors.

c) Respect for the dignity of the person and the principle of non-discrimination based on race, sex, religion, opinion, nationality, disability or any other personal or social circumstance

d) The protection of youth and childhood.

e) The safeguarding of intellectual property right".

National legislation covers a very broad concept of information society services, which includes the conclusion of contracts for goods and services in electronic format,

the provision of information by specific means (such as newspapers or magazines that can be found on the web), intermediation activities related to the provision of access to the network, the transmission of data through telecommunications networks, etc. And it's also understood that such services can be offered by various entities:

- Telecommunications operators
- Internet access providers
- Portals
- Search engines
- Any other entity that has a website on the Internet through which it carries out any of the specified activities, including electronic commerce.

In any case, it is clear that collaboration platforms are a mechanism that allows interaction between service providers and consumers, and therefore they are the fundamental axis around which consumption or the collaborative economy revolves. And, in turn, the services offered by this type of platform are translated as "Information Society services"; In other words, it is necessary to conclude that the different services that are included in the category of shared economy platform are services of the information society.

In the fact that Uber is considered a collaborative economy company or -which is the same as we see- a company that develops services for the information society, it would have immediate consequences, since it would fall under the Directive's regime 2000/31/CE and therefore in the Law of Services of the Information Society and Electronic Commerce; regulations that generally provide specific protection for this type of service.

In particular, with immediate consequences, more than relevant for this study, Article 4.1 of Directive 2000/31/EC establishes the principle of "no prior authorisation":

"1. The Member States shall provide that access to the activity of information society service provider may not be subject to prior authorisation or any other requirement with equivalent effects. "

Member States must ensure that access to the activities of an information society service provider cannot be subject to prior authorisation or any other requirement with similar consequences; An idea that, how could it be otherwise, is reproduced by the LSSI in its explanatory memorandum, section II:

"(...) It is allowed to limit the free provision of services of the information society in Spain only from other countries of the European Economic Area in the cases provided for by Directive 2000/31 / EC, which involve serious damage or danger to certain fundamental values, such as public order, public health or the protection of minors. Likewise, the provision of services from said States may be restricted when they affect any of the matters excluded from the principle of country of origin, which the Law specifies in its article 3, and the provisions of Spanish regulations that, where appropriate, are applicable to them, are breached"

Therefore, based on the Law, the restrictions hypothetically applicable to companies considered providers of information society services would obviously be very limited.

Thus, if the Court of Justice of the European Union (CJEU) ruled that the activities carried out by Uber Systems Spain were classified as an "information society service", in the first place, the Spanish judicial authorities could not order their termination. without violating Community law (Directive Law 2000/31/EC art. 3.2 or National Law 34/2002 of July 11) and, secondly, the argument that supports the taxi sector, which alleges that a multinational corporation is carrying out illegal concurrent activities, to provide passenger transport services without an appropriate authorising title (compulsory administrative licenses), will remain sterile because in light of the legal regime established by the European Directive (Directive 2000/31/EC, article 4.1) and the national legislation, its activity is not subject to prior authorisation, so Uber will not be subject to any of the crimes described in Law 3/1991 of January 10, Section 15.2 of the Unfair Competition Law:

"The simple violation of legal norms that have as their object the regulation of the concurrent activity will also be considered unfair."

2. THE UBER CASE

2.1 THE UBER COMPANY AND ITS APPLICATION

In 2009, Travis Kalanick and Garrett Camp founded Uber called "Uber Cab" and launched an app where consumers can submit their taxi requests, which are then redirected to non-Uber taxi drivers as well, based in San Francisco, California, Uber has transformed the global taxi industry by developing, promoting and managing a mobile app-based on transportation network.

Uber's business model is so innovative that other taxi companies are also trying to capitalise on this trend, known as Uberification, which has been created around the world. As a result, Uber was named Tech Company of the Year by USA Today in 2013 (Wolf, 2013).

Uber has never looked back since its inception and expanded internationally in 2012, it is a truly global company with a presence in 55 countries (more than 200 cities) as of March 26, 2015 and received \$ 2.8 billion in funding for 2015 (company website).

Experts rated Uber as their favourite company at \$ 40 billion and predicted that Uber would hit \$ 100 billion in revenue by the end of 2015, an incredible achievement for a startup from five years ago (Shontell, 2014). Uber's revenue was also projected to grow 300% and would be expected to grow another 300% in 2016 (Davidson, 2015).

As a global company, Uber faces fierce competition in different countries from different companies. In the US, Uber is only present in 132 cities and faces little (or no) competition in 54 cities.

However, in other cities, the company faces stiff competition. The list of participants includes Curb and Sidecar. As an example is India being the second largest market for Uber (although with 5% of the market), the competition intensified

when Ola Cabs (60% of the market) announced the acquisition of the second largest taxi company in India, TaxiForSure, for \$ 200 million on March 2, 2015.

Also, the Chinese taxi market is very important to Uber, as Uber's 100th city is only in China. It has always been difficult for any foreign company to succeed in the Chinese market despite strong competitive advantages, as location is the most important factor in achieving success in China. YongChe, a mobile car-sharing service, is Uber's biggest competitor in China, having visited 50 Chinese cities and plans to visit more than 100 cities by the end of 2015.

Competition exists and will always exist. Most importantly, Uber has transformed the traditional global taxi industry into a competitive high-tech global market by creating a disruptive business model.

So far, this short Uber ride has been exceptional. The company has not disclosed its finances, but according to some industry rumours, the company is believed to generate around \$ 1 billion in revenue each month. However, there are many criticisms about the dynamic pricing technique, that is, the price hike that the company is following because the company is taking a lot of social media and word of mouth to market its application.

Some examples that have been subject to criticism could be on New Year's Eve, during the Sydney hostage crisis, when customers were charged nearly five times more than regular rates. Second, the company faces many legal challenges in many countries, such as Spain, where services have become prohibited because the company is accused of unfair competition and operating without permission, an issue that we will deal with in the next section.

In India, the company has promised incredibly lower rates than automatic rickshaws of ₹ 7 / km. Furthermore, a few months after the launch in Delhi, the services were banned by a court in Delhi, after one of the drivers raped a female passenger. The Delhi authorities accused the company of doing little and, in some cases, of not conducting any background checks.

Uber, on the other hand, has minimal control over drivers, as they are as independent partners and not directly involved in the company's payroll. Faced with great embarrassment in social media circles in India, Uber has made some major changes to the app. Operations have become more transparent and the app displays the driver's photo, name, license number, vehicle type, phone number and an emergency message allowing the user to instantly communicate with the local police station. Despite all these efforts, there will always be problems in this regard, as Uber has little or no control over drivers.

On the same day that Uber services were banned in Delhi, India, judges in the Netherlands banned the ride-sharing service UberPop, which was launched as a pilot in Amsterdam from July to September and then expanded to The Hague and Rotterdam.

Thai authorities also came to a similar conclusion, deeming Uber's unlicensed and uninsured taxi services illegal, and asked the company to cease operations, at least until it begins to use properly licensed drivers instead of private cars.

One of the main factors behind such a great success in such a short period of time is a smooth checkout process, where the buyer manages without even paying a tip, since their credit card is loaded. So this appears to be the driving force behind the growth of the company in the developed world. However, this backfires in emerging markets, especially India and Africa, where most people do not have access to credit cards and are more comfortable paying with cash.

Therefore, the company must decide whether it is really prudent to pursue the same strategy around the world. The challenges for Uber lie in their international operations and how they will clear up the price hike in the near future.

Despite all this negative hype, Uber has reached the highest level and gained a huge competitive advantage over its competitors, but if Uber can maintain that for

an extended period of time, how will the company carry out all of its global operations with higher turnover volumes?

In this context, we will define that Uber is an international company that offers a private transport network through its mobile application developed in the US called, initially UberPop. The computer application was created by the American company in order to hire a driver to take the customer with his vehicle to the destination chosen by him, therefore, it connects travellers with registered drivers (Bashir and Verma, 2016)

The operation of this platform angered taxi drivers in Spain, since Uber drivers do not have the required public passenger transport license and do not apply existing rates. In this sense, Uber would be committing an act of unfair competition for violating the rules in light of the published information. Consequently, Uber was banned in Spain for unfair competition at the behest of the Madrid Taxi Association. The Madrid Commercial Court closed the company nationwide because its drivers did not have administrative permits to carry out their work.

The Uber App, developed in the USA, is presented as a new practical platform that facilitates the creation of safe and timely vehicles; however, this application has had several reception conflicts around the world. (Pérez Rodríguez, B, 2020)

2.2 THE CONFLICT BETWEEN UBER AND TAXI DRIVERS

The conflict between the taxi sector and the multinational began after Uber landed in Spain in April 2014, offering person-to-person transportation through the Uberpop application in the city of Barcelona; This fact caused a quick reaction on the part of the taxi drivers who immediately began to mobilise against him, calling various manifestations and demanding the prohibition of the services to the Generalitat of Catalunya through the lawsuit that was filed before the Commercial Court No. 3 of Barcelona on October 29, 2014. In this tense and hostile context, Uber intensified the pressure, settling in Madrid in September 2014 and in Valencia. As its presence expanded in our territory, the outrage in the taxi sector also increased, which believed that Uber was offering competitive and unfair activities by being an intermediary between operators and unlicensed users, as real commercial activities without administrative requirements in relation with passenger transport.

Until recently, the taxi sector had a monopoly on passenger land transport in our country, since there was no alternative that offered land mobility services for passengers that could compete with the old and well-positioned taxi sector. However, the proliferation of information and communication technologies (ICT) and mobile phone applications (apps) with built-in geolocation has caused a notable change in the way of traveling, since it is a series of tools that optimise routes and communication between users of electronic platforms. If we add to this phenomenon the emergence of the so-called VTC licenses (Tourist Vehicles with driver), which we will explain later, we obtain as verifiable an emerging threat that the traditional monopoly of the taxi sector began to face and that led to a battle since 2014, in which there is a fundamental polarisation against Uber.

With all this, in 2014, unfair competition lawsuits were manifested against the joint platform and its Spanish subsidiary. One of the judges who asked them a preliminary question in court, ruled that Uber does not provide "information society services." This interpretation must lead to the conclusion that an international corporation committed an unjust crime of violation of the rules, for not having the necessary permits to carry out urban passenger transport in automobiles.

Let's review and analyse in detail what Uber is, what its operating instrument is and what operating system it has. Uber is a large American company, which arrived in Spain in April 2014 and offered a payment service through a Smartphone application, called "Uberpop", to connect non-professional drivers who use their own car and people who want to perform urban movements, without administrative permits or licenses to provide this service. Therefore, the controversial activity developed by Uber revolves around the use of the Uberpop application, which connects drivers and passengers and is owned by the American multinational Uber Technologies Inc; a company that has a wide range of services, among which, undoubtedly, the main one is the transport service on request, that is, transport with a driver.

The work of this controversial app is roughly as follows: a passenger opens an app that can be downloaded and used for free, enters their destinations, clicks on all available travel options to view wait times, ticket sizes vehicles and prices, which is set in advance, regardless of possible contingencies, such as traffic jams, and then confirms the pick-up location, then a driver is assigned for the vehicle, when the vehicle in question is approximately one minute away, the consumer of the service is automatically notified, so that finally the driver and passenger can mutually verify their names and destination. Thus, Uber is an application that connects or interacts with three parties: the passenger, the driver of the vehicle registered in the Uber service and the collaboration platform itself, which sets the conditions under which the service operates.

Consequently, in this mode of operation, Uber, together with Airbnb, is a prototype of the platform of the so-called "shared economy" or "shared consumption", which can be briefly defined as: "industrial organisation model in which an electronic platform facilitates the conclusion of service contracts, including the leasing service of goods offered by a group of users (suppliers) and demanded by another group of users (consumers) "or, in other words, the interaction of two or more entities through digital means, which meets the needs of one or more people; therefore, neither Airbnb owns real estate, nor BlaBlaCar or Uber own vehicles. In fact, and as we will analyse later, after the invasion of our country, Uber defended itself precisely by using its electronic application to establish itself as an information society service that only allows suppliers to contact applicants.

The intermediation services provided by the joint platforms are of the same nature as those defined in Directive (EU) 2015/1535 of the European Parliament and of the Council, of September 9, 2015, which establishes an information procedure on the matter of technical regulations and rules relating to information society services, see article 1.b:

"<<service>>: any information society service, that is, any service normally provided in exchange for remuneration, remotely, electronically and at the individual request of a recipient of services."

In other words, the taxi sector, based on article 15.2 of Law 3/1991 of January 10 on Unfair Competition, realised that the multinational was developing illegal competitive activities to provide passenger transport services without administrative permits, mandatory in this sector. Considering that the deserved rule establishes that:

"The simple violation of legal norms that have as their object the regulation of concurrent activity will also be considered unfair"

Faced with this scenario, Uber initially based its defense on the argument that the drivers who register on its platform, as customers or passengers, are nothing more than ordinary users of the application, since the only thing they formalise is a contract on the provision of services, which consists of the fact that drivers use the platform not for commercial purposes, but for the simple purpose that passengers help them pay the costs incurred by their own vehicles.

However, this defense strategy began to falter after the first judicial appeal that we can find in our country regarding this conflict: the Madrid Taxi Association filed a lawsuit on December 9, 2014 before the Commercial Court No. 2 of Madrid, which agreed assess, based on Law 1/2000, article 733, the drastic precautions that were requested and that concluded in the Judgment of September 15, 2015 as follows:

- Termination and prohibition in Spain of the provision and award of transport services to passengers in cars called "Uberpop" or any other that may be called for the same purpose by the platform.

- Termination and prohibition of the content, access and provision of the specified passenger transport service "Uberpop" in Spain through the website (www.uber.com) or any other that may be used under the same terms.
- Termination and prohibition of any application or any other technological or computer support or system for the provision of specified passenger services in Spain.

All of this was the result of a dispute discussion that was followed by this commercial court based on the following ideas: Uber Technologies Inc. owns an internet domain and a smartphone download system that allows drivers to provide services of passenger transport without mandatory administrative need (permits), for which the company allegedly acts unfairly in the sector of scheduled passenger services.

There are reasons why it is recommended to take precautions as soon as possible, in the presence of accidental illegal actions that directly affect the inadequate taxi service. Faced with this forceful decision on December 31 of the same year, Uber ceased its operations in Spain, but emphasising that the closure in the country would not be final.

The conflict has now changed as Uber's strategy has shifted and it operates under the protection of driverless vehicle rental licenses. An analysis of the evolution of the legal regime of this figure shows that it gradually hardens as access barriers and activity restrictions increase (that is, the capture of the legislator). The Supreme Court determined that most of them were legal.

In November 2015, Carles Lloret, head of Uber in Spain, assured in an interview with *El Español* that "Uber is rebuilding to try to comply with Spanish law", that "they wanted to run too much" on their previous site and now they wanted to restore their services through another method: "UberX", which is protected by the corresponding VTC licenses.

Well, as the platform itself announced, Uber started working in Spain again in the first quarter of 2016 but reinvented itself, this was done with a new service called UberX, which was an evolution of the original Uberpop application and, instead of using private drivers, it was addressed only to people with a driver's license (VTC), authorisations to exercise the activity of leasing vehicles with a driver, as its name indicates (Tourist vehicle with driver), which according to regulations establishes a VTC authorisation for every 30 taxi.

Thus, the multinational changed its strategy, while ensuring, within the framework of legal protection, that, as we will see, the leasing of vehicles with driver (VTC) in the transfer of compulsory licenses, therefore, should be classified as an information society service; thus providing itself with a legal umbrella that allowed him to return its cars to the street.

Obviously, this new way of working did not satisfy the taxi drivers, who immediately called again various mobilisations and protests that took place until the end of 2017 and that, as we all had the opportunity to observe in various media, in some cases they led different altercations in streets. However, from now on, the debate on the legal qualification of the activities carried out by Uber, either as an information society service or as a transport service, has become absolutely essential and, on the other hand, the resolution of the conflict will no longer affect only Uber, but the rest of the companies and people who previously received and used the VTC licenses (such as, for example, in the case of Cabify) and, of course, the state administrations themselves that have the right to issue them, since the VTC authorisation procedures and their granting is the responsibility of the Autonomous Communities by delegation of the State.

The Judgment of the Court of Justice of the European Union (Grand Chamber) of December 20, 2017 initiated a fundamental debate on whether the activities carried out by Uber, should be understood as an information society service or as a transport service. This debate was resolved by the Court of Justice of the European Union in a ruling of December 20, 2017, on the explanation of the preliminary ruling issued by the head of the Economic Court no. 3 of Barcelona by act of July 16, 2015, when the luxury taxi college filed a lawsuit demanding that the aforementioned commercial court declared that the activities of Uber Systems Spain practiced acts of unfair competition, "*violated*

current regulations and constituted fraudulent activities and acts of unfair competition in the sense of Law 3/1991 on Unfair Competition ”.

The competent court had previously indicated that although Uber Systems Spain operates in Spain, these activities are linked to an international platform (which justified that the company's actions were analysed at the European level) and that this was an unavoidable requirement to determine whether The services provided by a company, such as transportation services, information society services, or a combination of both, are illegal and unfair in order to check whether Uber's actions could be classified as dishonest and in violation of Spanish competition rules. Therefore, the request for a preliminary decision referred only to the legal classification of this service.

In this sense, the Court of Justice of the European Union considered that “an intermediation service that consists of the connection of a non-professional driver who uses his own vehicle with a person who wishes to move around the city is, in principle, a non-transport service, which consists of the physical act of moving people or goods from one place to another using a vehicle. It should be added that each of these services, considered in isolation, may be associated with an information society service or a transport service; and, on the other hand, the final resolution of the conflict will affect not only Uber, but also other companies and people who previously received and used the corresponding licenses.

Thus, an intermediation service that allows the transfer of information about the reservation of transport services between a passenger and a non-professional driver who uses his own vehicle and carries out the transport through a smartphone application, in principle meets: the classification criteria as "information society service" within the meaning of Directive 98/34, article 1.2, referred to in Directive 2000/3/EC, article 2.a:

"<Services of the information society>: services within the meaning of paragraph 2 of article 1 of Directive 98/34 / EC, as amended by Directive 98/48 / EC"

As established by the definition of the aforementioned provision of Directive 98/34, this intermediation service is “*a service that is usually provided remotely for a fee, in electronic format and at the individual request of the recipient of the service*”. However, despite these considerations, which seemed to support the position of the American

multinational, the same resolution in its speech 37 considers that: “However, it must be clear that a service such as that of the main process is not limited to a service intermediary that consists of the connection, through a smartphone application, of a non-professional driver who uses his own car with a person who wants to move around the city”; and the court continues its speech.

It turns out that Uber's intermediation services are based on the selection of non-professional drivers who use their own car, with which this company provides an application, without which, on the one hand, these drivers cannot provide transportation services, and, on the other hand, people who wish to move around the city will not be able to use the services of the aforementioned drivers. In addition, Uber has a decisive influence on the conditions of service provided by these drivers. The last point, in particular, it seems that Uber, through the application of the same name, establishes at least the maximum price of the race, that receives this price from the customer and then pays a part to the non-professional vehicle “driver” and that exercises certain control over the quality of the vehicles, the suitability and behaviour of the drivers, which may lead to their exclusion.

Consequently, in the eyes of the Court of Justice of the European Union, Uber is a transport operator; and therefore must comply with the special requirements of the regulations, which in our case are identified with those provided for Law 16/1987, of July 30, on land transport management (hereinafter - LOTT), which in article 42 states:

"1. The operation of the public transport of passengers and goods will depend on the availability of a permit that allows it, issued by the competent authority of the General Directorate or, where appropriate, the authority of the Autonomous Community in which the address is located, indicating powers when this right has been transferred by the State".

3. LIBERATION IN THE TRANSPORTATION SECTOR

In view of the consideration of the jurisprudence of the CJEU and the Supreme Court, it is evident that Uber Systems Spain cannot be considered as an information society service.

The reaction of the Taxi Sector is understandable with the arrival of Uber. This sector has historically been characterised by being substantially regulated due to the importance it has on the consumer. In this way, a considerable number of entry barriers have been imposed, among others, in the form of the aforementioned administrative authorisations, which is necessary to be fulfilled for the development of its activity.

Based on these entry barriers, none of the criteria used by jurisprudence and doctrine to determine when it is constitutionally obliged to compensate for damages caused by a private measure of unfair competition, will pay the initial compensation in the event of a hypothetical liberalisation of services of taxi.

Such a measure would not constitute a unique advantage, but rather a total volume regulation that would affect equally all operators in the sector whether or not they were related to the collaborative economy in the transport sector. Second, there is no person who can be considered a specific beneficiary of this measure, apart from all the potential users. None of them will be enriched with the profit that the taxi drivers were supposedly deprived of.

Third, it can be understood that the new regulation would not undermine the essential content of the "property" that we assume taxi drivers have with respect to their licenses, which obviously do not include the right to freeze their number, nor to reduce their profitability and prices in the secondary market, but to provide taxi services, a right that could continue under the new regime.

It is not reasonable to think that liberalisation - not compensated by compensation - would violate the principle of legitimate expectations, because it would

involve unforeseen regulatory changes that would undermine the investments made by taxi drivers and imposed, or at least caused by public administrations. On the one hand, because liberalisation has been predictable for a long time, since for many years it has been constantly talked about in the academy, in the professional sphere and even in the media. On the other hand, because the investments that could spoil the regulatory changes - basically the money that is paid to acquire a license in the secondary market - were not imposed, approved, encouraged or discouraged by government administrations, unlike what has happened in other cases in which victims received compensation.

Fifth, the value of licenses in the secondary market is not the result of socially significant activities carried out by their holders, but rather of "profits that fell from the sky" (windfall) or, perhaps, the result of efforts made by those who have taken them to seize the authorities in charge of setting rates and the maximum number of vehicles allowed. And the deprivation of such benefits is one of the recognised cases in the practice of the European Court of Human Rights in which compensation may not be demanded. It must be taken into account that taxi licenses in our country are issued free of charge, and their price in the secondary market does not depend at all on the effort and resources invested by their owners in the development of their activities, but mainly on the decisions of the company.

The higher the fare and the lower the number of authorised taxis, the more they will pay for licenses, which is one of the main reasons why the above compensation is not only not required by the constitution, but is also inconvenient for common interests. This is an incentive for licensees to exert pressure on the competent authorities to prevent new entrants from entering the market and setting rates higher than the socially optimal. The more restricted the access and the higher the tariffs, the greater the possible compensation, and the compensation can have a negative deterrent effect on the decision to liberalise the market.

Given the large number of taxi drivers affected and the amount of compensation received, it is unlikely that the competent authorities, the autonomous communities, want to pay them out of their budgets. This will likely force municipalities to pay as well and will be politically impractical. And the transfer of its cost to the users of the

service, as was done during the liberalisation of the electricity sector, would soften that resistance to liberalisation somewhat, but it would definitely distort the functioning of the market, changing the optimal price and volume of the services that they are borrowed and would give seasoned taxi drivers a competitive advantage over new entrants.

It does not appear that compensation can fulfil one of its most important objectives here: the objective of preventing public authorities from taking socially undesirable measures at the expense of a minority that lacks the necessary opportunities and incentives to adequately protect their interests in political processes and take action in making decision. On the one hand, because the liberalisation of the taxi market, and in particular the elimination of the numerous clauses, is likely to benefit the community. On the other hand, given that, as we already know, it can be assumed that taxi drivers have been able and continue to exert undue influence on the competent authorities, making it difficult for them to be abused by adopting rules that falsely benefit the authorities. However, there are strong theoretical arguments and some empirical evidence to suggest that the exact opposite is much more likely to occur: that the authorities will be captured by these operators and will resist the establishment of the regulation that best serves the interests of the general public.

The only significant social cost of denying taxi drivers, is that such a decision could generate strong opposition between them and those employers who find themselves in a similar situation in the future, that is, the origin of a resistance to the liberalisation of the sector in question, investing time, money and effort in pressuring the competent authorities to maintain the status quo, in short, the only reason why it would be convenient to formulate some type of temporary or compensatory provision, that mitigates the damage caused to taxi drivers and that it would avoid the risk - given the precedents, not very high - that the courts erroneously consider that liberalisation in the absence of such provisions is against the law, for example, by violating the principle of legitimate expectations.

When the Commercial Court No. 3 of Barcelona decided to present the UBER case before the jurisprudence of the CJEU and the Supreme Court, arguing that the activity of Uber Systems Spain is linked to an international platform, the Court recalled that as

this type of services of intermediation have not yet been legislatively developed by the European Parliament or by the Council of the European Union, it is the Member States that must regulate the conditions under which these services are provided, respecting the framework contemplated in the TFEU, thus creating a peaceful coexistence between European and corresponding Spanish laws.

The sharing economy is undoubtedly a phenomenon that will remain forever, its growth around the world is evident and non-negotiable, the increasing use of platforms such as UBER to transport people, AIRBNB to search for housing, or MEEDLEY, a virtual market for Buying and renting goods demonstrates a new consumer preference for this type of exchange, which was achieved in the European Union in 2015.

In the definitions that we can find about what the cooperation economy is, we see that, for example, for Rodríguez (Rodríguez, 2017), they are part of it: *“those models of production, consumption or financing that are based on the intermediation between supply and demand that arises in relationships between peers (P2P or B2B) or from an individual to a professional through digital platforms that do not provide a basic service, ensuring the efficient and sustainable use of existing and underused assets and resources, allowing the use, exchange, or investment of resources or assets, whether they exist or not, this is a question between users”*.

For Domenech Pascual (Doménech Pascual, 2016), it is about *“new systems of production and consumption of goods and services that emerge at the beginning of the 21st century and take advantage of the opportunities presented by recent advances in information technologies to exchange and share these goods and services”*. The author adds that: *“The novelty of the so-called collaborative economy lies in taking advantage of the opportunities offered by information technology at the end of the 20th century and the beginning of the 21st, an advantage that allows very significant reductions in information asymmetry and costs. Influence on these activities, increase the scale in which they are carried out and carry them out in ways that are different from those known up to now”*.

Previously, it has also been seen that the European Commission refers to *“business models that operate through collaborative platforms, which create an open market for the temporary use of goods or services, often offered by individuals. There are three categories of agents involved in the sharing economy:*

i) service providers who share assets, resources, time and / or skills - these can be individuals who offer services from time to time ("colleagues") or service providers who operate in a professional capacity ("Professional Service Providers")

ii) users of the specified services

iii) intermediaries that, through an online platform, connect providers with users and facilitate transactions between them ("collaboration platforms"). In general, operations in the economy do not imply a change of ownership and can be carried out with or without profit”.

From my point of view, the so-called cooperation economy is a transactional system that is characterised by the connection of individual agents through the use of information and communication technologies, with or without companies, to share resources with or without profit. Resources with inactive capacity so that they can be used by a party that values them, thus increasing the efficiency of the transaction asset object.

In this sense, there are many businesses around the world that have created a new movement based on the concept of digital trust, since in these cases, consumers and suppliers trust their partners based on the filters offered by the platforms for a complete identification.

The impact of the sharing economy is so great that some startups have managed, at least nominally, to swap units in just under a decade, which took decades for agents operating in the traditional market. One of these examples can be found in the comparison presented by Albert Canyeral, who pointed out that a company like AIRBNB has achieved the same number of rooms around the world in just 6 years, as it costs a multinational in the hotel sector as INTERCONTINENTAL HOTELS GROUP in 63 years, all without owning any property and with just 1,000 employees, while Intercontinental has a total of 120,000 employees.

But the most surprising thing is that, despite the lack of reserves, the AIRBNB bag is currently estimated to be valued at € 13 billion, while its colleague has € 10 billion.

From my point of view, it is clear that the economy of cooperation represents the evolution of capitalism, since it shows that this system is a true alternative for people to use their material or immaterial resources to ensure a better future through innovation, and the satisfaction of the needs of the society.

Therefore, it must be remembered that since the eighties, authors such as De Soto, Ghersi and Ghibellini, in their works "The other path" (Montgomery, 1988), taught us that informality has costs, among which the following stand out: the illegality that can materialise in the evasion of administrative sanctions, since informal entrepreneurs have to invest resources to avoid sanctions derived from the fact that they were not included in the regulation. Other examples are the cost of net transfers, since here it is clear that the informal saves costs of procedures and benefits of public services provided by the State, which forces the latter to transfer the financial weight of the state budget for formal activities; the costly costs associated with the lack of good law, which makes impossible to take advantage of the contractual system because contracts are not enforceable or difficult to enforce, as well as the costs associated with the lack of an effective tort liability system, in the case of that these losses do not affect only the parties involved in a specific situation, but the entire society.

This begs the question, why are consumers increasingly approaching the shared economy? I think the answer is that consumers intuitively act like intelligent beings who are profitable and therefore conclude that the perceived risks multiplied by the probability of their occurrence, which is less satisfaction than expected.

For example, when a person using an UBER taxi is in danger, or a police officer stops the vehicle, and it cannot reach their destination, in this case, if they paid for the trip, they would have to take another taxi and lose the money paid to the UBER company, with no option to get reimbursed. They can complain that the contract was

not fully honoured. Likewise, in the case of AIRBNB, it may well have happened that in the middle of the night the police, together with a travel agency, raided and forced guests to search for new accommodations.

It is clear however, that consumers find it so unlikely that such situations will occur and it is thus likely that their needs will be met by these agents that decide to assume the risks of acting outside the current legal regime. Therefore, it is clear that markets require the deregulation of these operations, thereby reducing transaction costs and increasing the efficiency of both production and distribution.

4. DISCUSSION

It is evident, by virtue of the proposals currently reviewed and discussed, that the confusion about the collaborative economy, its objectives and the dependence on technological advances allows an effective instrument of social transformation to remain hidden in the uncertainties of the definition.

This situation is aggravated when it is absorbed by the commercial dynamics of consumer capitalism, where, as happened at the time with environmental protection and other alternatives, the notion of "collaboration" becomes another attribute that characterises products, maintaining all the logic of obtaining capital gains.

In this sense, the analysis of these emerging processes is an academic task, but also a socially significant one. It will be the knowledge of the true nature that determines the relationships involved in this dynamic of social, economic and symbolic exchange, which will allow, in the first place, to carry out an adequate measurement, and later, the ability to follow and evolve the changes, both in terms of social groups and in terms of ideological alternatives and social relations.

5. CONCLUSION

Currently, the Spanish authorities are taking steps to maintain the status quo defined by the restrictions on freedom discussed above.

It is worth mentioning here the numerous administrative sanctions imposed on "Uber drivers" for providing taxi services without permission, as well as other conditions necessary for this and, above all, the criticised Order of the Commercial Court No. 2 of Madrid of 9 December 2014, ordering, as a precautionary measure, to stop and prohibit the activities carried out by Uber in Spain.

It seems clear that the activities of the aforementioned drivers do not comply with the legal and regulatory provisions that govern the sector, without prejudice to the fact that some of them may be considered unconstitutional, but it is very doubtful that the same can be said of the services provided by Uber, since it can be argued that these are not transport services, but rather an intermediation, so they should be subject to the commercial legislation, of the company established in the European Union - as in the case of Uber, registered in the Netherlands, the freedom to provide them without the need for prior authorisation. As for the taxi sector, the recently introduced taxis are far from being a balanced answer to the problems that arise here.

Take, for example, Organic Law 10/2014, which not only strictly maintains the aforementioned status quo, but also introduces the possibility of highly disproportionate "anti-Uber" measures such as immobilisation as a precautionary measure, which maintains it until the amount of the maximum fine that can be imposed for the alleged crime has been previously paid.

This reaction differs from the reaction in other areas and the competent authorities are beginning to establish the legal regime. This is especially for the so-called transport network companies, freeing them from the outdated restrictions that have been imposed on the traditional taxi industry, but also considering the limits of the services provided, as well as to protect other legitimate public purposes.

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